

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Thomas & Janet Ferlic, Petitioners-Appellants, v. Dickinson County Board of Review, Respondent-Appellee.	ORDER Docket No. 12-30-0651 Parcel No. 06-11-131-001
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On August 21, 2013, the above-captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellants Thomas and Janet Ferlic were self-represented. The Dickinson County Board of Review was represented by Assistant County Attorney Lonnie Saunders. The Appeal Board having reviewed the record, heard the testimony, and being fully advised finds:

Findings of Fact

Thomas and Janet Ferlic are the owners of a residential, single-family property located at 20540 Sandpiper Drive S#1, Spirit Lake, Iowa. According to the property card, the property is a condominium with 1336 square feet of total living area and a full basement with a one-car garage stall built in 1972. The property has three decks totaling 300 square feet. The property is of good quality grade (3+5) and is in very good condition. The property has been allocated a 0.191 acre site in the Sandpiper Cove condominium complex.

The Ferlics protested to the Dickinson County Board of Review regarding the 2012 assessment of \$451,100, allocated as \$328,900 in land value and \$122,200 in improvement value. The January 2012 assessment of the subject property did not change from the 2011 assessment. Their claim was

based on the following grounds: 1) the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), and 2) there was a downward change in value under sections 441.37(1)(b) and 441.35(2). The Ferlics asserted the correct value was \$360,000. The Board of Review denied the Ferlics' claims.

The Ferlics then appealed to this Board re-asserting their claims. 2012 was an interim assessment year, and because the property's assessment did not change from the previous year, the only ground available for protest is that there has been a change downward in value since the last assessment. *Eagle Food Ctrs., Inc. v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993). Thus, the only ground this Board will consider on appeal is that the property suffered a downward change in value from 2011 to 2012.

Thomas Ferlic testified no improvements have been made to the condominium since it was built in 1972. He has not requested the assessor inspect the property despite believing the property's condition is not "very good," as listed on the property record card. Additionally, the assessor had not asked to inspect the property. At hearing, both parties agreed to arrange an inspection to determine the correct property condition. Ferlic also believes the land is over-valued and not worth its \$328,900 assessed value. He presented no evidence to support this assertion.

The condominium was originally purchased by Janet Ferlic's parents (James and Ruth Ellen Hollander) in 1972. Then in September 2011, the Ferlics bought the subject property from the Hollander Trust for \$360,000. (Exhibit C).

The Ferlics' purchase price was determined by using two competitive market analyses (CMA) developed by local real estate agents. They submitted one CMA developed by realtor Kathleen K. Hinn of Dowden-Hinn Realtor as evidence. Hinn's analysis included three 2010 condominium sales from different areas of West Lake Okoboji and concluded a probable sale price for the subject property of \$365,000 as of April 2011. Although various adjustments were made for differences such as time of

sale, age, size, site, and amenities; no explanation of the adjustments was included and the CMA lacked any narrative analysis. We also note the three sales Hinn offered had an adjusted range from roughly \$297,000 to \$481,700. This range includes subject property's 2012 assessed value. Ferlic testified the second CMA, although not offered as evidence, concluded a similar value. Hinn's CMA lacked both explanation for her adjustments and an analysis of the sales data. For these reasons, we give it no consideration.

Assessor Stephanie Sohn testified on behalf of the Board of Review. She testified the value of properties on West Lake Okoboji have remained stable in the last few years. We note the property record shows the subject property has had the same assessed value since 2010. Sohn explained that in a horizontal property regime, the common areas and amenities including tennis courts, fencing, footbridges, and paving in the complex, are allocated according to the documents establishing the regime, not by the assessor. The value of these ownership allocations is divided among the individual condominium units. Sohn also testified the Ferlics' purchase was between family members and not considered a normal, arm's-length transaction. She reports there have been no arm's-length sales of Sandpiper Cove Condominiums in the past seven years.

To prove a change in value, the Ferlics must establish the fair market value of the subject property both on January 1, 2011, and on January 1, 2012. *Equitable Life Ins. Co. of Iowa v. Bd. of Review of the City of Des Moines*, 252 N.W.2d 449, 450 (Iowa 1997). The assessed value cannot be used to establish either of these fair market values. *Id.* While Hinn's CMA, although flawed, may offer some indication of the 2012 market value, the Ferlics have not provided any evidence to establish the 2011 market value. Therefore, this evidence is insufficient to prove a change in value.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply.

Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. § 441.21(1)(b). If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

In a non-reassessment or "interim" year, when the value of the property has not changed a taxpayer may challenge its assessment on the basis that there has been a downward trend in value. *Eagle Food Ctrs., Inc.*, 497 N.W.2d at 862. Iowa Code section 414.37(1)(b) and its reference to section 441.35(2) give rise to the claim of downward trend in value. For the Ferlics to be successful in their claim of change in value, they must show a change in value from one year to the next; the beginning and final valuation. *Equitable Life Ins. Co. of Iowa*, 252 N.W.2d at 450. The assessed value cannot be used for this purpose. *Id.* Essentially, it is not enough for the Ferlics to prove the last

regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451.

In this case, the Ferlics have failed to provide sufficient evidence of either the January 1, 2011; or January 1, 2012, market value to prove their claim. Hinn's CMA lacked explanation and analysis and therefore we cannot determine that Hinn's conclusion is an accurate reflection of the property's fair market value on January 1, 2012. Further, the Ferlics provided no evidence of the property's fair market value on January 1, 2011, to establish a downward change in value.

THE APPEAL BOARD ORDERS the assessment of the Ferlics' property located at 20540 Sandpiper Drive S#1, Spirit Lake Iowa, of \$451,100, as of January 1, 2012, set by the Dickinson County Board of Review, is affirmed.

Dated this 5th day of September, 2013.

Stewart Iverson
Stewart Iverson, Presiding Officer

Jacqueline Rypma
Jacqueline Rypma, Board Member

Karen Oberman
Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>September 5, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
<u>Jean Casper</u>	
Signature _____	